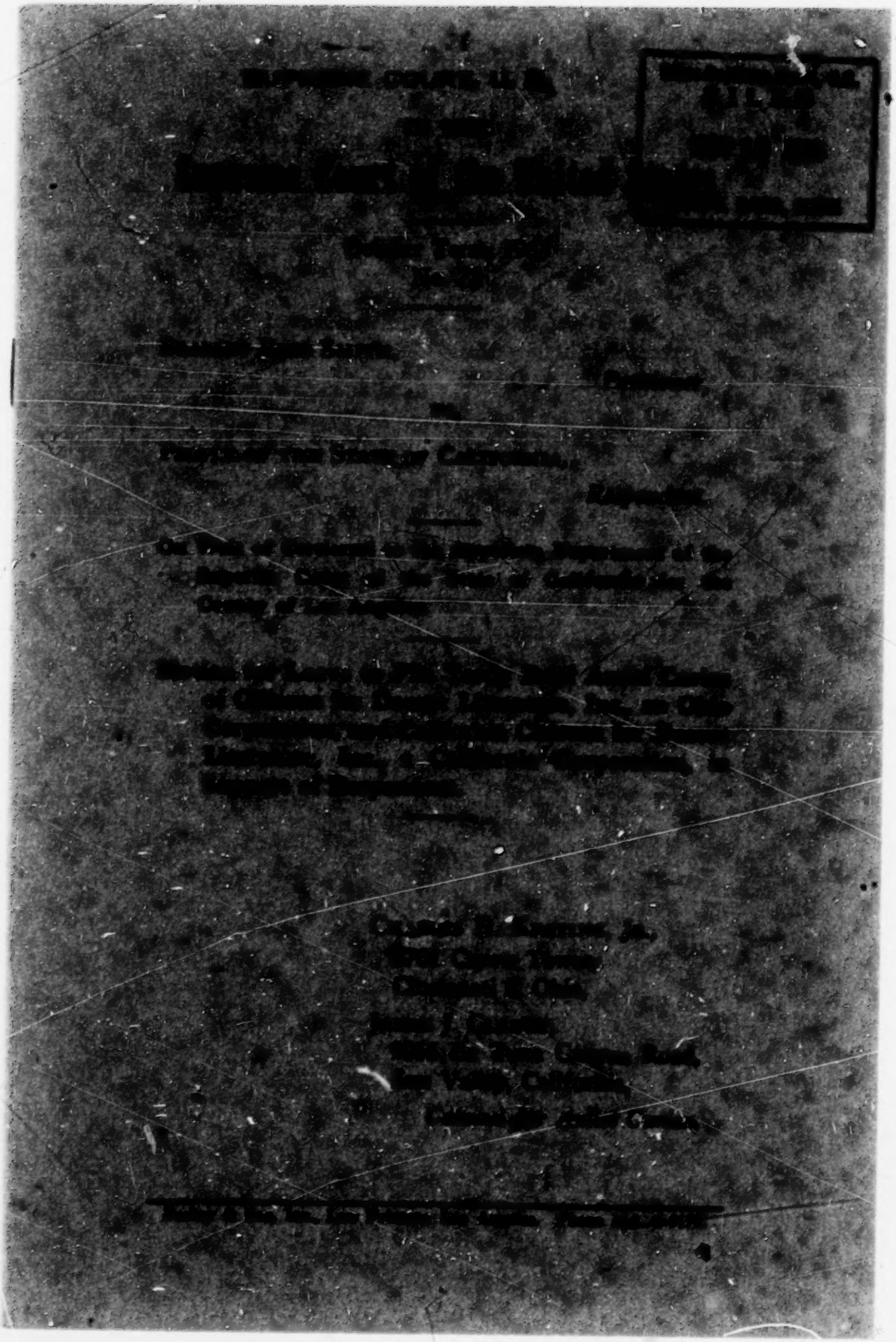

IN THE

Supreme Court of the United States

October Term, 1963
No. 72

BRADLEY REED SMITH,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Appellate Department of the Superior Court of the State of California for the County of Los Angeles.

Motion for Leave to File Brief Amici Curiae of Citizens for Decent Literature, Inc., an Ohio Corporation, and California Citizens for Decent Literature, Inc., a California Corporation, in Support of Respondent.

Citizens for Decent Literature, Inc., an Ohio Corporation, with local affiliates throughout the United States is a non-profit, non-sectarian and non-political corporation with national headquarters in Cincinnati, Ohio, formed for and dedicated to the cause of good, decent and wholesome literature with a view to oppose and eliminate obscene literature, by cooperating with law enforcement in the enforcement of the laws. California Citizens for Decent Literature, Inc., a California

Corporation, operates as an affiliate of the national organization and is similarly dedicated.

The formulation of both organizations grew out of an impelling demand on the part of the larger segments of society, especially responsible fraternal, civic and religious organizations, which seek to bring under control the nationwide dissemination of obscene literature.

For the Court's convenience both *amici curiae* are hereinafter referred to by the single short title, CDL.

CDL believes that there exists a growing flood of publications, purposely designed and manufactured with a sensationalized appeal to prurient interest, that threatens to overthrow the basic morality upon which our nation and our Constitution were founded; that while the First Amendment of our Constitution has, from the time of our nation's founding, been construed to afford no protection to such publications, a loud voice is now being heard in the court-room advocating the overruling of this "balancing of interest" interpretation in favor of an absolutist approach, aimed at nullifying the nation's basic obscenity laws.

At its recent national convention in Chicago during October of 1963, the national organization of Citizens for Decent Literature adopted a policy aimed at giving increased support in the fight against "obscenity", through legal advocacy in the court-room in support of the people's case. Such action made possible, for the first time, the filing of the brief referred to herein.

Concurrently herewith, *amici curiae* have filed a motion for leave to file a brief in support of the petitioner in, Petition for Writ of Certiorari, *Arnebergh v. Zeitlin*, in the Supreme Court of the United States, October Term, No. 584. It is submitted that the following arguments to be presented in said Zeitlin motion, apply with equal weight and should be presented for the court's consideration herein, with additional argument on questions already raised in the briefs on file:

(1) A jury's finding of "obscenity" is final.

(2) The determination of "obscenity" is primarily an issue of fact, and the Court's review is limited to the question, "whether or not reasonable minds may differ that the matter is obscene."

(3) "Tropic of Cancer", as a matter of law, is without the area of protected speech and press as that line is drawn in *Roth v. United States* and *Alberts v. Calif.*, 354 U. S. 476, 1 L. Ed. 2, 1498 (1957), whether that line be drawn at "obscenity" or "hard-core pornography".

(4) Freedom of speech and the press, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States and as construed in *Roth v. United States* and *Alberts v. California* (*supra*) and other decisions of this court, do not limit the proscription of state obscenity laws to the suppression of "hard-core" pornography only.

The *Zeitlin* case and the *Bradley Reed Smith* case herein are cases of nationwide and historical importance, which will have a serious effect on enforcement of the obscenity statutes throughout the nation. Motion is therefore made under Rule 42(2), 28 U. S. C. A. for leave to file a tardy brief *amici curiae* in support of respondent herein. On November 13, 1963, counsel for *amici curiae* posted airmail letters to counsel of record for the parties in the above entitled cause, requesting their consent to the tardy filing of this brief *amici curiae.*

Respectfully submitted,

CHARLES H. KEATING JR.,
JAMES J. CLANCY,
Counsel for Amici Curiae.